



# Section 106 of the National Historic Preservation Act Programmatic Agreements

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# What is a Programmatic Agreement?

- Programmatic agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with Sec. 800.14 (b). [36 CFR 800.16(t)]
- It becomes a substitute for the step-by-step approach in the Section 106 regulations. It must still meet the intent of the regulations.

# Who is a Party to a PA?

- The Advisory Council on Historic Preservation and the agency official [local government] may negotiate a programmatic agreement to govern the implementation of a particular program [e.g., rehabilitation program] or the resolution of adverse effects from complex project situations or multiple undertakings.

# Programmatic Agreements

- PROGRAMMATIC AGREEMENT (PA)
  - BY AND AMONG
    - THE CITY AND COUNTY OF SAN FRANCISCO,
- THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
- AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
- REGARDING HISTORIC PROPERTIES AFFECTED BY USE OF REVENUE FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PART 58 PROGRAMS
- WHEREAS, the City and County of San Francisco (“City”), a “Responsible Entity” under 24 C.F.R. Part 58, proposes to administer and fund projects and programs (hereinafter referred to as “Undertakings,” as defined in 36 C.F.R. 800.16y) in the City and County of San Francisco with monies from the U.S. Department of Housing and Urban Development (“HUD”) programs (“Programs”) delegated to the City pursuant to 24 C.F.R. Part 58 or any other pertinent HUD regulations; and



# When do we use a PA?

- A programmatic agreement may be used:
  - **When effects on historic properties are similar and repetitive or are multi-State or regional in scope;**
  - **When effects on historic properties cannot be fully determined prior to approval of an undertaking;**
  - **When nonfederal parties are delegated major decision-making responsibilities;**
  - Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or
  - Where other circumstances warrant a departure from the normal section 106 process. [36 CFR 800.14(b)(1)]

# When do we use a PA?

- A programmatic agreement may be used when effects on historic properties are similar and repetitive or are multi-State or regional in scope.
  - Rehabilitation programs
  - Lead remediation program
  - Façade improvement program
  - Handy worker program

# When do we use a PA?

- A programmatic agreement may be used when effects on historic properties cannot be fully determined prior to approval of an undertaking.
  - Large phased mixed used project with residential, commercial, parking, etc. with potential for archeological work
  - Need HUD \$\$ up front to develop plans, but you don't have anything to submit to SHPO yet. Entering into Agreement Document is evidence that agency has complied with Section 106.

# When do we use a PA?

- A programmatic agreement may be used when nonfederal parties are delegated major decision-making responsibilities.
  - Rehabilitation of a large historic hotel into senior housing. Work is carried out by developer. PA says upfront what will be done, who will do the work, and how. Defines a review process and roles.



# What can a PA do for you?

## **REHABILITATION PA**

- Stipulations in a PA may outline specific, agreed upon approaches to:
- Applicability of the agreement
  - Undertakings not requiring further review
  - Agreed upon APEs
  - Identification of historic properties
  - Assessment of effects
  - Compliance Reports

# What can a PA do for you?

## **APPLICABILITY OF THE AGREEMENT**

- Limits the PA to certain programs or activities
- Timing
- Establish standards to be followed
- What is not included in PA

# What can a PA do for you?

## APPLICABILITY OF THE PROGRAMMATIC AGREEMENT (PA)

- The City shall comply with the stipulations set forth in this PA for all undertakings which are **limited to the rehabilitation of buildings** that (1) are assisted in whole or in part by revenues from the HUD subject to 24 CFR Part 58 and that (2) can result in changes in the character or use of any Historic Properties that are located in an undertaking's Area of Potential Effect (APE), as defined in Stipulation IV, below.
- The review process established by this PA **shall be completed before the City's final approval of any application for assistance under this Program, before a property is altered by either the City or a property owner**, and before the City or a property owner initiates construction or makes an irrevocable commitment to construction that may affect a property that is fifty (50) years of age or older, or that is otherwise eligible for listing in the National Register of Historic Places.
- For purposes of this PA, the **Secretary of the Interior's definition for rehabilitation shall be used**: "Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values."
- This PA **does not include new construction, demolition of existing buildings, or development of vacant land.**

# What can a PA do for you?

## **UNDERTAKINGS NOT REQUIRING FURTHER REVIEW**

- Section 106 regulations do not provide for exemptions or exclusions, such as those found in CEQA or NEPA.
- A proposed action is either an undertaking or it is not.
- PA is the legal way to mutually agree that certain undertakings will not be reviewed



# What can a PA do for you?

## UNDERTAKINGS NOT REQUIRING REVIEW BY THE SHPO OR THE ACHP

- Undertakings only affecting properties that are **less than fifty (50) years old**.
- Undertakings **limited exclusively to interior** portions of single-family residential properties where the proposed work will not be visible from the property's exterior.
- Undertakings limited exclusively to the activities listed in **Appendix "A"** of this PA. Undertakings not so limited shall be reviewed pursuant to this PA. Undertakings involving Historic Properties but nevertheless exempt from review pursuant to Appendix "A" shall be designed to conform to the greatest extent feasible with the California State Historic Building Code, [State of California, Title 24, Building Standards, Part 8 ("SHBC")] as well as Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Building, 1995.
- Rehabilitation of **mobile homes**.

# Appendix A

- **The following Undertakings require only administrative review by the CITY and not the SHPO or the ACHP pursuant to Stipulation III of this PA.**
- Demolition and rehabilitation of facilities that are not Historic Properties, except when a proposed addition of such facilities may affect a surrounding or adjacent historic district;
- Repair, replacement and installation of the following systems provided that such work does not affect the exterior of a property or require new duct installation throughout the interior:
  - electrical work;
  - plumbing pipes and fixtures, including water heaters;
  - heating and air conditioning system improvements;
  - fire and smoke detector system installation;
  - sprinkler system installation;
  - ventilation system installation;
  - interior elevator or wheelchair conveying system; and
  - bathroom improvements where work is restricted to an existing bathroom.

## APPENDIX A, cont'd.

- Repair or partial replacement of porches, decks, cornices, exterior siding, doors, thresholds, balustrades, stairs, or other trim when the repair or replacement is done in-kind to closely match existing material and form;
- Installation of new shelf space or improvement of such, and repair, replacement, and installation of cabinets, countertops, and appliances;
- Repair or replacement of fencing, gates and freestanding exterior walls when work is done in-kind to match existing materials and form;
- Repair, replacement or installation of windows and storm windows (exterior, interior, metal or wood) provided these match the shape, size and materials of the historic windows and provided that, for storm windows, the meeting rail coincides with that of the historic window. Color should match trim. If reproduction of damaged elements must be accomplished with new materials then any reproduction or replacement shall be in kind;
- Installation of new window jambs, jamb liners, and screens;
- Caulking, weather-stripping, reglazing and repainting of windows;



## APPENDIX A, cont'd.

- Roof repair or replacement of historic roofing with materials that closely match existing materials and forms. Cement asbestos shingles may be replaced with asphalt-based shingles;
- Repair, replacement or installation of gutters and down spouts;
- Repainting and refinishing of exterior or interior surfaces, including but not limited to walls, floors, and ceilings, provided that harmful surface preparation treatments including but not limited to water blasting, sandblasting, and chemical removal are not used and that work is done in-kind to match existing material and form;
- Repair or replacement of awnings and signs when work is done in-kind to closely match the existing material and form;
- Installation of insulation, with the exception of area formaldehyde foam insulation or any other thermal insulation with a water content into wall cavities, provided that decorative interior plaster or woodwork or exterior siding is not altered by this work item;
- Installation or replacement of security devices, including dead bolts, door locks, window latches, security grilles, surveillance cameras and door peepholes, and electronic security systems;
- Installation of grab bars, handrails, guardrails and minor interior and exterior modifications for disabled accessibility;



## APPENDIX A, cont'd.

- Modifications of and improvements to path of travel for persons with disabilities from, to and within a building, structure, playground, or park.
- Repair or replacement of interior stairs when work is done in-kind to match existing material and form;
- Replacement of non-significant flat stock trim
- Repair or replacement of existing roads, driveways, sidewalks, curbs, curb ramps, speed bumps and gutters provided that work is done in-kind to closely match existing materials and forms and provided that there are only minimal changes in the dimensions and configurations of these features;
- Repair, replacement and installation of the following, regardless of their location within or adjacent to an historic district:
- Park furniture, including benches, picnic tables, chairs, planter boxes, barbecue pits and trellises.

## APPENDIX A, cont'd.

- Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
- Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.
- Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation XI.B.
- Acquisition of properties which is limited to the legal transfer of ownership with no physical improvements proposed.
- Outdoor yard improvements, including play structure, matting, fencing, gates, play ground lighting, drinking fountain, play ground equipments, path of travel and ramps.
- Landscaping, including tree planting, tree pruning, shrub removal, play court resurfacing or sodding, irrigation, murals and painting of game lines for school play yards and grounds.

## APPENDIX A, cont'd.

- Repair, replacement or installation of water, gas, storm, and sewer lines when the work qualifies as an exemption pursuant to Stipulation XI.B.
- Acquisition of properties which is limited to the legal transfer of ownership with no physical improvements proposed;
- Temporary bracing or shoring;
- Anchoring of masonry walls to floor systems so long as anchors are embedded and concealed from exterior view such as in the HILTI systems;
- Stabilization of foundations and addition of foundation bolts;
- Rental and installation of scaffolding;
- Installation of temporary, reversible barriers such as chain link fences and polyethylene sheeting or tarps;



## APPENDIX A, cont'd.

- Repair and replacement of any interior or exterior elements when the repair or replacement is done in-kind to closely match existing materials
- Temporary bracing or shoring;
- Anchoring of masonry walls to floor systems so long as anchors are embedded and concealed from exterior view such as in the HILTI systems;
- Stabilization of foundations and addition of foundation bolts;
- Rental and installation of scaffolding;
- Installation of temporary, reversible barriers such as chain link fences and polyethylene sheeting or tarps;
- Repair and replacement of any interior or exterior elements when the repair or replacement is done in-kind to closely match existing materials.



# What can a PA do for you?

## **AREA OF POTENTIAL EFFECTS**

- Can establish up front, agreed upon APEs for certain situations, such as rehabilitation projects and associated infrastructure improvements

# What can a PA do for you?

## AREA OF POTENTIAL EFFECTS

- The Area of Potential Effects (APE) for undertakings covered by this PA shall be **limited to the legal lot lines** of a property when the undertaking consists exclusively of rehabilitating a property's interior or exterior features.
- **Improvements to Infrastructure.** The APE for installation of infrastructure shall associated with the rehabilitation of a building will be as follows:
  - Water and sewer lines: the APE shall be the trunk of the sewer and water line;
  - Curb Cuts for disability access: the actual curb area under construction shall be the APE;
  - Pavements: the APE shall be the pavement structure and pavement base.
  - In all other infrastructure improvements the APE shall be analogous in purpose, structure and location to the APE of those listed in subsections 1 through 3 above.

# What can a PA do for you?

## **IDENTIFICATION OF HISTORIC PROPERTIES**

- Establishes local government's responsibilities and authority
- Outlines when re-review of property already evaluated is not necessary
- Steps to follow in evaluation process by local government
- What to do if SHPO concurs with local government's finding
- What to do if SHPO does not concur with local government's finding

# What can a PA do for you?

## **IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES**

At a minimum the City shall:

- Review the current listing of the National Register of Historic Places (NRHP).
- Review lists of Historic Properties maintained by the City and any other information available in the City's records pertaining to any property within an Undertaking's APE .
- Review lists of Historic Properties maintained by the appropriate regional center of the California Historical Resources Information System or its successors..
- Visit the site and evaluate in accordance with the Section 106 process.
- If the property is one to which Indian Tribes attach religious and cultural significance, those Indian tribes will be consulted by the City regarding the Undertaking.



## IDENTIFICATION, cont'd.

### No need to re-review an eligible property

- If a property is listed or has already been determined eligible for listing in the NRHP, the City shall proceed in accordance with Stipulation VIII, unless exempted by Stipulation III
- If the City, in consultation with the SHPO, has determined a property to be ineligible for listing in the NRHP within a period of five (5) years prior to the City's approval of an Undertaking covered by this PA and if no other provision of this PA requires the City to take further steps with respect to the Undertaking, the City shall document the actions taken in the manner prescribed by Stipulation XVI and may authorize the Undertaking to proceed without further review

## IDENTIFICATION, cont'd.

### The evaluation process:

- Unless exempt pursuant to Stipulation III or to Sections B and C of this Stipulation, the City shall evaluate all properties that may be affected by an Undertaking using the National Register criteria set forth in 36 CFR Section 60.4. All evaluations shall be documented by the City on a State of California Historic Resources Inventory Form – DPR 523.
- If a property proposed for rehabilitation is not listed in the NRHP, has not been evaluated for National Register eligibility within the past five (5) years, and is at least 50 years old, the City shall submit the documentation required pursuant to 36 CFR 800.4 including a completed California Historic Resources Inventory Form (DPR 523) to the SHPO for review (included as Attachment “B” to this PA). The City shall seek information, as appropriate, from individuals and organizations likely to have knowledge or concerns with historic properties in the area. The SHPO may request additional information if necessary. The City shall apply the National Register criteria and notify the SHPO of its determination in this submittal.

## **IDENTIFICATION, cont'd.**

If the SHPO concurs:

- If the SHPO concurs with the city that a property is eligible under the criteria, the property shall be considered a Historic Property under this PA. The City shall continue consultation in accordance with the terms of this PA for all such properties.
- If the SHPO concurs with the City that the criteria are not met, the property shall be considered ineligible for inclusion in the NRHP for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period unless a party to this PA notifies the other parties in writing that it has determined that changing perceptions of significance warrants a property reevaluation. Such properties require no further review under this PA



## IDENTIFICATION, cont'd.

If the SHPO doesn't concur:

- If the SHPO disagrees with the City's determination regarding eligibility, the City shall consult further with the SHPO to reach agreement. If agreement cannot be reached, the City shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations found at 36 CFR Part 63.
- If the SHPO does not respond to the City's determination within thirty (30) calendar days following receipt, the City may assume that the SHPO does not object to the determination and shall proceed in accordance with any other applicable requirements of this PA.

# What can a PA do for you?

- If a local government has professionally qualified staff or is committed to hiring professional consultants, authority of local government can be expanded to make more decisions
- Expand the applicability of the PA
- More authority to determine historic properties

# What can a PA do for you?

- **EXPANSION OF APPLICABILITY OF PA**
- The City shall comply with the stipulations set forth in this Programmatic Agreement (“PA”) for **all Undertakings** that (1) are assisted in whole or in part by revenues from the HUD Programs subject to 24 CFR Part 58 and that (2) can result in changes in the character or use of any Historic Properties that are located in an Undertaking’s Area of Potential Effect (“APE”), as defined in Stipulation VI, below.  
(San Francisco)



# What can a PA do for you?

## **MORE AUTHORITY TO DETERMINE HISTORIC PROPERTIES**

- The responsibilities of the City under the terms of this PA shall be coordinated by assigned individual(s) employed by the San Francisco Planning Department who meet the Secretary of the Interior's Professional Qualification Standards in History and Architectural History found at 36 CFR Part 61, Appendix A.
- All such reviews, as required under this PA, shall be carried out by or under the direction of the City's CLG Coordinator. The City shall allocate appropriate staff as necessary to ensure that its responsibilities under this PA are carried out. Such staff shall monitor, in keeping with the City's standard environmental review, permit, and inspection processes, Undertakings included in Appendix A of this PA and shall certify that the manner in which they are implemented is consistent with the content of Appendix A. Such staff shall also certify that all other work subject to this PA is carried out in compliance with the PA's terms and shall include such certification in the documentation required pursuant to Stipulation XIX, "Documentation and Reporting of Activities", below. (San Francisco)

# What can a PA do for you?

## **MORE AUTHORITY TO DETERMINE HISTORIC PROPERTIES**

- If the City determines that the property is eligible for inclusion in the NRHP, the determination shall be documented on a State of California Historic Resources Inventory Form – DPR 523 and submitted by the City to the SHPO for review.
- If the City determines that the property is not eligible for inclusion in the NRHP, the City may proceed in accordance with any other applicable requirements of this PA. The City is not required to submit such determination individually to the SHPO for review but shall submit a list of such properties semi-annually as part of the documentation required pursuant to Stipulation XIX. Such properties shall not be considered Historic Properties under this PA for a period of five (5) years following the date of the determination and need not be reevaluated during this time frame, unless any signatory to this PA notifies the other signatories in writing that changing perceptions of significance justify a reevaluation (San Francisco)

# What can a PA do for you?

## **ASSESSMENT OF EFFECTS**

- Establishes what standards will be used
- What documentation needs to be forwarded to SHPO
- Processes for
  - No adverse effect
  - Adverse effect
- Changes to the project



# What can a PA do for you?

## ASSESSMENT OF EFFECTS

- **The City shall ensure** that scopes of work, plans and specification for Undertakings that may affect Historic Properties and that are not exempt from review under this PA conform to the recommended approaches in the **Secretary of the Interior's Standards** for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Building, 1995 ("Standards") and to the greatest feasible extent, to the **SHBC**.
- For properties identified as Historic Properties under Stipulation V and prior to any activities that are not exempt under Stipulation III, the City shall review provide the SHPO appropriate project documents to determine conformance of the Undertaking with the Standards and SHBC, including **photographs and a general work description which adequately details the scope of work for each project** that may affect a Historic Property that includes **work write-ups, working drawings and specifications, as appropriate**, and additional documentation necessary to understand the undertaking. The City shall apply the criteria of adverse effect, 36 CFR 800.5, in consultation with the SHPO to any Historic Property that may be affected by a project, and will review the scope of work to determine if the rehabilitation project conforms to the recommended approach contained in the Standards.

#### **ASSESSMENT OF EFFECTS, cont'd.**

- If the City determines that the Undertaking conforms to the Standards and complies with the SHBC the City shall notify the SHPO in writing of a finding of no adverse effect. If the SHPO does not object in writing to this determination within thirty (30) days, the Undertaking shall be considered to have “no adverse effect” on Historic Properties, and may proceed as submitted without further review.
- If the City determines that the Undertaking does not conform to the Standards and SHBC, or if the SHPO objects to a finding of “no adverse effect” the Undertaking will be considered to have an “adverse effect” on Historic Properties. The SHPO and the City shall consult and recommend modifications to the scope of work or conditions under which the Undertaking would be found to conform to the Standards.

## **ASSESSMENT OF EFFECTS, cont'd.**

- If the City accepts the recommended modifications, the Undertaking will be considered having “no adverse effect” on the Historic Property, and may proceed as modified without further review. If the modifications recommended are not accepted, then the City shall consult further with the SHPO for a period of time not to exceed thirty (30) days to seek ways to avoid, minimize, or mitigate the adverse effect. If all adverse effects cannot be avoided, the City shall proceed in accordance with 36 CFR 800.6.
- The City shall notify the SHPO of any changes to an approved scope of work, other than activities exempt under Stipulation III, and shall provide the SHPO with the opportunity to review and comment on such changes. If the changes do not conform to the Standards, the parties shall consult further to minimize or mitigate the adverse effects in accordance with 36 CFR 800.6(b)(1).
- The City shall retain documentation of the rehabilitation as part of its permanent records.



# Is a PA worth the effort?



- Upfront investment of time developing PA
- Submission of biannual Programmatic Agreement Compliance Report (PACR)



- Once in place, reduces consultation time
- Provides predictability
- Provides exemptions from review

# What is the Process?

Early on contact the SHPO if you have:

- Rehabilitation program, lead mediation, etc.
- Large multi-phased project
- May need to draw down \$\$ to prepare plans and you nothing yet to submit to SHPO
- Developer/owner is delegated authority to carry out work with little oversight by local government.

- Section 800.14(b)
  - Read: general background on PAs
- Section 800.6
  - Notify the Advisory Council on Historic Preservation
  - They will let you know if they wish to participate in the preparation of the PA

- Section 800.11
  - Documentation requirements. What the Advisory Council wants to see:
    - Description of programs, CDBG, etc., covered by PA; current areas where program is active; photos; maps; known historic properties in the area
    - Description of steps already taken to identify historic properties within the area(s) to be covered by the PA, including the status of your survey program
    - Views provided by the public and consulting parties, and Indian tribes that may attach religious and cultural significance to historic properties that may be affected. If there are no views, explain how their views will be sought and considered.



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